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NOV - 7 2012

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NORTHERN DISTRICT OF CALIFORNIA

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INNOVATION VENTURES, LLC and LIVING ESSENTIALS, LLC

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15 UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

16
17 INNOVATION VENTURES, LLC and LIVING
ESSENTIALS, LLC,

18 Plaintiffs,

19 -against-

20 PITTSBURG WHOLESALE GROCERS, INC.,
d/b/a PITCO FOODS, et al.,

21
22 Defendants.

12 Civ. 5523 (WHA)

STIPULATION AND ORDER

FILED UNDER SEAL

23 UPON THE STIPULATION AND AGREEMENT by and between the undersigned counsel
24 for Plaintiffs Innovation Ventures, LLC, and Living Essentials, LLC, (together, "Plaintiffs"), and
25 defendant Elite Wholesale, Inc. ("Elite"), it hereby is ORDERED as follows:

26 1. Elite acknowledges having been served with the following documents and waives any
27 defenses as to personal or subject matter jurisdiction with respect to these documents: Summons and
28

1 Complaint; Order to Show Cause for a Temporary Restraining Order and Preliminary Injunction,
2 including the supporting Declarations and Memorandum of Law; and Seizure Order.

3 2. For purposes of this stipulation, the "5 HOUR ENERGY Marks" are:

4

5 • "5 HOUR ENERGY" (Registration No. 3,003,0770);
6 • "5-HOUR ENERGY" (Registration No. 4,004,225);

7 **5-hour**
8 **ENERGY**

9 • (Registration No. 4,104,670);



12 • which includes the wording "5-hour ENERGY" in black outlined in
13 yellow, below which are the words "EXTRA STRENGTH" in yellow, along
14 with a person in black silhouette, outlined in yellow, shown in an athletic pose
15 adjacent to an uneven landscape, with the sky depicted in transitioning colors
16 from black to red as the sky meets the landscape (Registration No. 4,116,951);



19 •, commonly referred to as "Running Man," (Registration No. 3,698,044);

20 and



23 •



26 •





which includes the wording "5-hour ENERGY" in black outlined in
long with a person in black silhouette, outlined in yellow, shown in an
pose adjacent to an uneven landscape, with the sky depicted in
ing colors from red to yellow as the sky meets the landscape
tion No. 4,120,360).

3. Elite and its agents, servants, employees, and all other persons in active concert and participation with them, pending the final hearing and determination of this action are preliminarily enjoined from:

- (a) using any of the 5 HOUR ENERGY Marks (or any marks confusingly similar thereto) on any counterfeit product in connection with the manufacture, sale, offer for sale, distribution, advertisement, or any other use of dietary supplements;
- (b) using any logo, trade name or trademark confusingly similar to any of the 5 HOUR ENERGY Marks which may be calculated to falsely represent or which has the effect of falsely representing that the services or products of Elite or of others are sponsored by, authorized by or in any way associated with Plaintiffs;
- (c) infringing any of the 5 HOUR ENERGY Marks;
- (d) otherwise unfairly competing with Plaintiffs in the manufacture, sale, offering for sale, distribution, advertisement, or any other use of dietary supplements;
- (e) falsely representing themselves as being connected with Plaintiffs or sponsored by or associated with Plaintiffs or engaging in any act which is likely to cause the trade, retailers and/or members of the purchasing public to believe that they or the other defendants are associated with Plaintiffs;

- (f) using any reproduction, counterfeit, copy, or colorable imitation of any of the 5 HOUR ENERGY Marks in connection with the publicity, promotion, sale, or advertising of dietary supplements;
- (g) affixing, applying, annexing or using in connection with the sale of any goods, a false description or representation including words or other symbols tending to falsely describe or represent such goods as being 5-Hour ENERGY® and from offering such goods in commerce;
- (h) diluting any of the 5 HOUR ENERGY Marks;
- (i) buying, selling, transferring (other than to Plaintiffs or law enforcement officials), altering, or destroying any counterfeit products with the 5 HOUR ENERGY Marks;
- (j) destroying any records documenting the manufacture, sale, offer for sale, distribution, advertisement or receipt of any product purporting to be 5 HOUR ENERGY®; and
- (k) assisting, aiding or abetting any other person or entity in engaging in or performing any of the activities referred to in subparagraphs (a) through (j) above.

4. Plaintiffs and Elite stipulate that, as among them, there are no issues to address at the hearing scheduled for November 7, 2012, with respect to the Seizure Order and Order to Show Cause. Elite waives any and all rights they might have to a hearing to contest the seizure executed at 12323 Sherman Way, North Hollywood, CA 91605 on October 29, 2012 or to a hearing to challenge the issuance of a preliminary injunction.

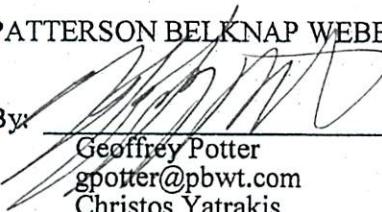
5. Plaintiffs and their surety, American Contractors Indemnity Company, are released from any and all liability under the bonds filed in this case (including Bond Nos. 1000772114 and 1000772115) and the seizure executed against Elite at 12323 Sherman Way, North Hollywood, CA 91605 is hereby confirmed.

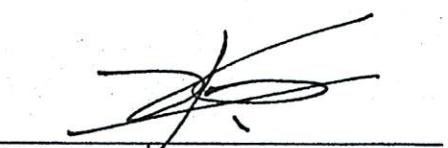
6. Signatures transmitted electronically or by facsimile shall be deemed original.

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2 Dated: 11-7, 2012
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CONSENTED AND AGREED TO BY:

PATTERSON BELKNAP WEBB & TYLER LLP

By: 
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Attorneys for Elite Wholesale, Inc.

SO ORDERED:



UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I, Tanya L. Hill, declare:

I am a citizen of the United States, am over the age of eighteen years, and am not a party to or interested in the within entitled cause. My business address is 88 Kearny Street, 10th Floor, San Francisco, California 94108-5530.

On November 7, 2012, I served the following document(s) on the parties in the within action:

STIPULATION AND ORDER

	BY MAIL: I am familiar with the business practice for collection and processing of mail. The above-described document(s) will be enclosed in a sealed envelope, with first class postage thereon fully prepaid, and deposited with the United States Postal Service at San Francisco, California on this date, addressed as follows:
	BY HAND: The above-described document(s) will be placed in a sealed envelope which will be hand-delivered on this same date by _____, addressed as follows:
X	VIA FACSIMILE: The above-described document(s) was transmitted via facsimile from the fax number shown on the attached facsimile report, at the time shown on the attached facsimile report, and the attached facsimile report reported no error in transmission and was properly issued from the transmitting facsimile machine, and a copy of same was mailed, on this same date to the following:
<p>Manoucherhr Heikali Santa Monica Distributing, Inc. aka David Heikali 3180 West Olympic Boulevard Santa Monica, CA 90404 FAX: 310-453-9178</p> <p>Aziz Heikali Santa Monica Distributing, Inc. aka Ed Heikali 3180 West Olympic Boulevard Santa Monica, CA 90404 FAX: 310-453-9178</p>	
	<p>Attorney For Manoucherhr Heikali IN PRO PER</p> <p>Attorney For Aziz Heikali aka Ed Heikali IN PRO PER</p>
X	VIA E-MAIL: Based on a court order or an agreement of the parties to accept service by e-mail, I attached the above-described document(s) to an e-mail message, and invoked the send command to transmit the e-mail message to the person(s) at the following e-mail address(es). I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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24
25 I declare under penalty of perjury under the laws of the State of California that the foregoing is
26 a true and correct statement and that this Certificate was executed on November 7, 2012.

27 By


28 Tanya L. Hill